

REMARKS

Claims 1 to 16 and 19 to 29 remain pending. Claims 30 to 34 have been added.

Claims 1 to 10, 13 to 16, and 25 to 29 have been rejected under 35 U.S.C. 112, first paragraph, for failure to comply with the written description requirement. The Action stated that the claim language "the broth has a broad range of plant cell constituents of the plant seed cells" constitutes new matter.

Rejection of claims 1 to 10, 13 to 16, and 25 to 29 under 35 U.S.C. 112, first paragraph, has been overcome since the objected-to claim language has been deleted.

Claims 1 to 10, 13 to 16, and 25 to 29 have been rejected under 35 U.S.C. 112, second paragraph, for failure to particularly point out and distinctly claim the subject matter regarded as the invention. The Action stated that the claim language "broad range" did not establish the metes and bounds of the invention.

Rejection of claims 1 to 10, 13 to 16, and 25 to 29 under 35 U.S.C. 112, second paragraph, has been overcome since the objected-to claim language has been deleted.

Claims 1 to 10, 13 to 16, and 25 to 29 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2002/0071878 ('878) in view of WO 00/64472 ('472). The Action stated that it would have been obvious to provide the composition having cultured plant seed cells in a topical composition to treat skin disorders as disclosed by U.S. '878 and to selected specific plant seeds depending on the condition to be treated as

disclosed in '472. The Action further stated that the disclosure of '472 is motivating in that "the fruit extracts manage dermatological conditions related to aging with reasonable expectation of having a topical composition that provides the cultured plant seed cells to the skin, nails, or hair at the desired amount to a particular location with disorder and in need for such treatment with success." The Action also stated that when seeds are cultured in any culture media, it is expected that undifferentiated cells will be present.

The rejection of claims 1 to 10, 13 to 16, and 25 to 29 under 35 U.S.C. 103(a) as being unpatentable over '878 in view of '472 is overcome. Independent claims 1 and 13 as amended require that the composition "consist essentially of" a broth having cultured, homogenized undifferentiated plant seed cells and a cosmetically acceptable vehicle. Claims 1 and 13 as further amended require that the composition of claim 1 or the composition used in the practice of the method of claim 13 be cosmetic compositions for increasing cell proliferation. Claims 1 and 13 claims as further amended require that the broth is present in an amount effective to increase cell proliferation. Cell proliferation is disclosed in the specification in paragraphs 0016, 0018, 0030 and 0031.

The transitional phrase "consisting essentially of" limits the scope of the claim to the specified materials or steps that do not materially affect the basic and novel characteristics of the claimed invention. In re Herz, 537 F.2d 549, 551-2, 190 USPQ 461, 463 (CCPA 1976). In this instance, the inclusion of this transitional phrase is intended to substantially foreclose the presence of differentiated plant seed cells in the claimed composition and method. Since Soudant requires the presence of

differentiated cells (paragraphs 0006, 0039, and 0040), claims 1 and 13 distinguish over the disclosure of same.

Additionally, the compositions of Soudant are rich in ingredients referred to by Soudant as dormans. As described by Soudant, the dorman compositions are effective in inhibiting growth and proliferation of target cells or tissue (paragraph 0022 of Soudant). The purpose of the compositions of Soudant is underscored by the title of the application "Anti-Proliferative Preparation". Further, the Examiner's attention is directed to Paragraph 0056 of Soudant, which states the following at lines 6 to 8:

"Inhibition of the fibroblast proliferation by the use of the dormans composition of the invention, provides a viable, less toxic alternative [to cytotoxic drugs]."

As is apparent from the foregoing, the presence of dormans and the inhibition of growth and proliferation of target cells or tissue are essential features of the disclosure of Soudant.

The composition and method claims as amended require improved cell proliferation, not cell inhibition. As the human body ages, cell proliferation is reduced, resulting in dermatological aging of skin. Dermatological aging is manifest by aesthetically compromised skin, e.g., skin that has reduced collagen levels, wrinkles and fine lines, skin atrophy, skin sagging, poor skin texture, low cell turnover, and combinations thereof. Increasing skin cell proliferation improves the aesthetic appearance of dermatologically aged skin and will lessen the effects of aging on the appearance of skin. It is evident that the claimed composition and method are the antithesis of those of Soudant. Indeed, Soudant clearly teaches

away from the claimed invention by providing a composition and method that will exacerbate the very conditions the claimed invention is trying to improve.

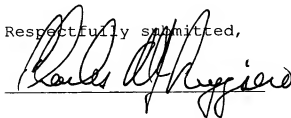
The Action states that WO '472 discloses a method and composition for treating dermatological conditions using fruit extracts, which are useful for treating certain skin conditions. As best understood by Applicants, the Examiner concludes that WO '472 motivates the practitioner of ordinary skill in the art to use the specific plant seeds taught in WO '472 (as fruit extracts) to provide the claimed compositions of the present invention by utilizing the culture procedures of Soudant. Applicants respectfully disagree with this conclusion and accordingly traverses the obviousness ground of rejection.

The practitioner of ordinary skill receives no motivation from WO '472 to arrive at the claimed invention, as the disclosure of Soudant is specifically anti-proliferative. Even if the seeds mentioned by WO '472 were used by the practitioner of ordinary skill, the resulting composition would be a dormant composition. Applicant further points out that WO '472 mentions not only the use of seeds, but also indicates that the fruit extracts "can be obtained from any part of the plant, including the fruit, the skin or rind, the seeds, the bark, the leaves, the roots, or the stems." Thus, the practitioner of ordinary skill in the art must not only disregard the clear teachings of Soudant in order to be motivated, but must also select the part of the plant to use from among numerous choices. The same difficulty also confronts the practitioner with regard to the Soudant reference, which also recites any plant part and only exemplifies the use of bulblets.

New claims 30 to 34 also patentably distinguish over the combination of Soudant and WO '472. Dependent claims 30 and 31 require that the improvement in aesthetic appearance of skin be a reduction in the dermatological signs of aging. Reduction in the dermatological signs of aging is disclosed in page 10, line 23 to page 12, line 5 of the specification. Dependent claims 32 and 33 disclose features and processing techniques of the broth. Such features and processing techniques are disclosed at page 7, lines 1 to 10. Independent claim 34 requires that the topical cosmetic composition consist essentially of a broth and a vehicle. Claim 34 also requires that the plant seed cells be present in an amount effective to promote/accelerate cell turnover. Promotion/acceleration of cell turnover is disclosed at page 12, lines 7 to 14.

Reconsideration of claims 1 to 16 and 19 to 29 is deemed warranted in view of the foregoing, and allowance of said claims as well as new claims 30 to 34 is earnestly solicited.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Charles N. J. Ruggiero", is written over a horizontal line.

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